

Adopt California Code of Regulations

Title 4, Division 12. California Educational Facilities Authority (CEFA)

Chapter 3. Qualified Scholarship Funding Corporations

MODIFIED TEXT

The modified text is shown as:

New Text = Double underline

Deleted Text = Double underline and strikeout

All written comments must address the modified text only

The California Educational Facilities proposes the following modifications to the originally proposed text published on April 14, 2006, of Chapter 3, Division 12, of Title 4 of the California Code of Regulations, to read as follows:

Section 9071. Purpose

Before applying to the California Debt Limit Allocation Committee for allocation of a portion of the State Ceiling pursuant to Government Code Section ~~8869.82~~ and 8869.85, an entity that is seeking to issue Qualified Scholarship Funding Bonds must first obtain ~~CEFA staff approval, pursuant to Section 9073 (a)~~, unless such entity became a qualified scholarship funding corporation ~~as defined in subsection (d) of Section 150 of Title 26 of the United States Code~~ prior to January 1, 2006. The Authority may in its discretion determine not to grant approval to any entity regardless of whether the entity ~~qualifies-meets the threshold criteria~~ as an Eligible Candidate as defined in Section 9072(b). The Authority will consult and coordinate with the California Debt Limit Allocation Committee prior to making a final determination.

Note: Authority cited: Section 94140, Education Code. Reference: Section 94103, Education Code; Section ~~8869.82~~ and 8869.85, Government Code.

Section 9072. Definitions

In addition to the definitions set forth in Section ~~9020~~ 9001, the following definitions will govern the construction of this chapter:

- (a) “Candidate” means a corporation seeking approval from the Authority to apply for an allocation of the State Ceiling for the purpose of issuing Qualified Scholarship Funding Bonds.

- (b) ~~(1)~~ “Eligible Candidate” means a Candidate that (A) is incorporated, authorized to operate, and operating as a nonprofit corporation under California law, (B) is exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code of the Internal Revenue Code and Section 23701d of the Revenue and Taxation Code, (C) has its principal place of business or one of its significant branch offices in California, (D) as required by its articles of incorporation and bylaws, is established and must be operated exclusively for the purpose of acquiring student loan notes incurred under the Higher Education Act of 1965, as amended and as set forth in Sections 1070 through 1089 of Title 20 of the United States Code, or any successor provisions thereto and must devote any income (after payment of expenses, debt service, and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States, ~~(E) except as provided in subdivision (b)(2) of this section, is not owned or controlled by, or operated under common control with, a for-profit entity,~~ and ~~(F E)~~ has served Proper Notice.
- ~~(2) “Eligible Candidate means a Candidate that otherwise meets the definition in subdivision (b)(1) of this section and is owned or controlled by, or operated under common control with, a for-profit entity, and has demonstrated to the Authority, and the Authority in its discretion has agreed, that the Candidate will provide a public benefit that is not already being met by a Qualified Scholarship Funding Corporation, such as a grant program for financially needy students or an outreach program encouraging high school students to attend college and obtain an undergraduate degree.~~
- (c) “Proper Notice” means a written notice of intent to seek CEFA staff approval under these regulations addressed to the Executive Director of CEFA that is received between July 1 and August 31 of any calendar year, unless no qualified scholarship funding corporation eligible to receive a transfer of the State Ceiling exists, then such written notice of intent may be received on any date.”
- (d) “Qualified Scholarship Funding Bond” means a bond issued by a corporation in compliance with Section 150(d) of the Internal Revenue Code subsection (d) of Section 150 of Title 26 of the United States Code, including any amendments thereto or any successor provision thereof.
- (e) “State Ceiling” means the amount specified by Section 146(d) of the Internal Revenue Code subsection (d) of Section 146 of Title 26 of the United States Code and as determined by the California Debt Limit Allocation Committee for each calendar year.
- (f) “Student Loan” means a loan made, insured, or guaranteed under the Higher Education Act of 1965, as amended and as set forth in Sections 1070 through 1089 of Title 20 of the United States Code, or any successor provisions thereto.

Note: Authority cited: Section 94140, Education Code. Reference: Section 94103, Education Code; Section 8869.82 and 8869.85, Government Code.

Section 9073. Factors Criteria to Be Considered by the Authority

(a) When determining whether to grant ~~CEFA staff~~ approval to an Eligible Candidate, the Authority will consider all of the Eligible Candidate's attributes and qualifications including but not limited to:

(1) Whether the members of the Eligible Candidate's board of directors have sufficient experience, credentials and qualifications in the student loan industry.

(2) Whether the Eligible Candidate's chief executive officer and chief financial officer have sufficient experience, credentials and qualifications in the student loan industry.

(3) Whether the Eligible Candidate has a ~~reasonable~~ business and/or strategic plan.

(4) Whether the Eligible Candidate has a ~~reasonable~~ marketing ~~and/or outreach~~ plan.

(5) Whether the Eligible Candidate can demonstrate that it has or will have sufficient staff and a sustainable organizational structure in California to undertake the issuance of bonds and/or acquisition of student loans in California.

(6) Whether the Eligible Candidate has ~~significant~~ a demonstrated presence in California's student loan industry.

(7) Whether the Eligible Candidate can demonstrate the ability to deliver ~~high-quality competitive and comprehensive student loan~~ services to the students in California.

(8) If the Eligible Candidate is seeking bond financing for the purpose of originating student loans, whether the entity or its parent corporation has ~~sufficient~~ demonstrated experience in originating student loans.

(9) If the Eligible Candidate is seeking bond financing for the purpose of purchasing student loans in the secondary market, whether the entity or its parent corporation has ~~sufficient~~ demonstrated experience in purchasing student loans in the secondary market.

(10) Whether the Eligible Candidate or its parent corporation has experienced an increase in student loan volume and asset base (direct origination or purchased, as applicable) in the previous three years.

(11) Whether the Eligible Candidate or its parent corporation has a demonstrated track record of offering ~~high-quality~~, competitive and comprehensive loan products.

(12) Whether the Eligible Candidate or any of its officers, employees or affiliates has been the subject of any administrative, civil or criminal enforcement action brought by a federal, state, or local governmental agency.

(13) If the Eligible Candidate is owned or controlled by, or operated under common control with, a for-profit entity, whether the Eligible Candidate will provide a public benefit that is not already being met by a Qualified Scholarship Funding Corporation, such as a grant program for financially needy students or an outreach program encouraging high school students to attend college and obtain an undergraduate degree.

Note: Authority cited: Section 94140, Education Code. Reference: Section 94103, Education Code; Section ~~8869.82~~ and 8869.85, Government Code.

Section 9074. Information to Be Submitted by the Candidate to the Authority

A Candidate seeking approval under this chapter must submit sufficient information to the Authority in order for the Authority to determine that the Candidate meets the threshold criteria of ~~Section 9072 (b)~~ to be considered an Eligible Candidate, and must also submit the following information to the Authority to assist the Authority in making ~~a~~ that determination:

(a) Organizational Information.

(1) An overview of the Candidate, including ownership structure and all related entities.

(2) A description of the present student loan activity and past student loan experiences of the Candidate and, if applicable, ~~or~~ its parent corporation.

(3) The Candidate's articles of incorporation and bylaws.

(4) Audited financial statements for each of the last three fiscal years.

~~(5) A completed copy of a legal status questionnaire, which can be obtained by the Authority upon request.~~

~~(6)~~(5) A resume for each board member and all key personnel, including but not limited to the chief executive officer and the chief financial officer, which must include relevant work experience, academic qualifications, and proposed responsibilities.

~~(7)~~(6) A description of partnerships with public or private organizations that would assist the entity in promoting access to post-secondary education for California residents.

~~(8)~~(7) A copy of the tax-exemption letter from the Internal Revenue Service and a copy of the tax-exemption letter or Letter of Good Standing from the California State Franchise Tax Board.

~~(9)~~(8) Certificate of Status of Domestic Corporation from the Secretary of State.

(b) Presence in California.

(1) A description of the Candidate's current business activities or operations being conducted in California.

(2) A description of the Candidate's business plan.

(3) The volume of student loans the Candidate reasonably anticipates making or purchasing as a result of receiving tax-exempt bond financing.

(4) The criteria, standards, terms and conditions anticipated for the programs and services to be provided by the Candidate.

(5) A description of where and how the Candidate would originate, service and/or purchase student loans.

(c) Legal Status.

(1) Disclosure of (A) criminal matters involving the Candidate, (B) civil matters involving the Candidate that may have an impact on the Candidate's legal or financial status, and (C) proceedings, investigations, or other matters involving federal, state or local regulatory agencies that may impact the Candidate's legal or financial status.

(2) Documents explaining or supporting items listed in subsection (1).

(d) If the Eligible Candidate is owned or controlled by, operated under common control with, a for-profit entity, documents demonstrating to the Authority in its discretion, that the Eligible Candidate will provide a public benefit that is not already being met by a Qualified Scholarship Funding Corporation, such as a grant program for financially needy students or an outreach program encouraging high school students to attend college and obtain an undergraduate degree.

~~(e)~~(e) Any additional information requested by Authority staff that is related to the criteria listed in Section 9073.

Note: Authority cited: Section 94140, Education Code. Reference: Section 94103, Education Code; Section [8869.82](#) and 8869.85, Government Code.

Section 9075. Public Notice

Prior to September 30 of each calendar year, the Authority ~~may publish~~ will compile a list of all Candidates that have served Proper Notice during the calendar year pursuant to this chapter. Such list will be available to the public upon request.

Note: Authority cited: Section 94140, Education Code. Reference: Section 94103, Education Code; Section [8869.82](#) and 8869.85, Government Code.